

SUSMAN GODFREY L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
SUITE 5100
1000 LOUISIANA STREET
HOUSTON, TEXAS 77002-5096
(713) 651-9366
FAX (713) 654-6666
WWW.SUSMANGODFREY.COM

SUITE 1400
1900 AVENUE OF THE STARS
LOS ANGELES, CALIFORNIA 90067-6029
(310) 789-3100

SUITE 3800
1201 THIRD AVENUE
SEATTLE, WASHINGTON 98101-3000
(206) 516-3880

32ND FLOOR
1301 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6023
(212) 336-8330

ELISHA BARRON
DIRECT DIAL (212) 729-2013

E-MAIL EBARRON@SUSMANGODFREY.COM

February 27, 2020

Via E-mail¹

The Honorable Sarah Netburn
United States Magistrate Judge
Thurgood Marshall Courthouse
40 Foley Square, Room 430
New York, NY 10007

Re: *Rich v. Fox News Network LLC et al.*, Civ. No. 18-cv-02223

Dear Judge Netburn:

Plaintiffs Joel and Mary Rich submit this letter identifying outstanding disputes regarding ESI protocol pursuant to the Court's Order (Dkt. 110).

Disputed Search Terms

Plaintiffs and Fox engaged in extensive negotiations over search terms, and have agreed to the vast majority of terms. However, there were two requests as to which Fox declined Plaintiffs' proposed terms. Plaintiffs have more than met their burden of showing "any possibility of relevance sufficient to warrant discovery." *Condit v. Dunne*, 225 F.R.D. 100, 106 (S.D.N.Y. 2004). "[O]nce that showing is made, the party resisting discovery bears the burden of demonstrating that, 'despite the broad and liberal construction afforded the federal discovery rules,' the requests are irrelevant, or are overly broad, burdensome, or oppressive." *Am. Fed'n of Musicians of the United States & Canada v. Sony Music Entm't, Inc.*, No. 15-CV-05249 (GBD) (BCM), 2016 WL 2609307, at *3 (S.D.N.Y. Apr. 29, 2016). "Potential relevance" is sufficient to warrant discovery. *Am. Fed'n of Musicians*, 2016 WL 2609307, at *4 (citing Fed. R. Evid. 401). "General and conclusory

¹ Plaintiffs do not believe this letter (or the joint letter submitted by the parties) implicates "sensitive or confidential information" such that filing pursuant to this Court's Individual Practice 1.A. is appropriate. However, Plaintiffs have agreed to file this letter pursuant to those procedures in order to enable Fox to make its argument regarding confidentiality to the Court.

February 27, 2020
Page 2

objections as to relevance, overbreadth, or burden,” on the other hand, “are insufficient to exclude discovery of requested information.” *John Wiley & Sons*, 298 F.R.D. at 186. Fox has made no showing of irrelevance or burden.

Plaintiffs respectfully request that the Court order Fox to run the searches below:

Search relating to RFP 2: “All documents and/or communications relating or referring to any sources for any Rich/Wikileaks News Item.”

- (Source OR anonymous OR “Federal Investigator” OR “federal agent” OR “fed agent” OR “investigative source!” OR “law enforcement source!” w/30 of
 - Wikileak! OR (DNC AND (Hack! OR Trump OR Russia)) OR (Rich OR Seth)

To capture documents relevant to RFP 2, Plaintiffs proposed these terms for just **two custodians**—Malia Zimmerman and Adam Housley—the (known) Fox employees who worked directly on the Rich/Wikileaks news articles. RFP 2 goes to a central issue in the case: Fox’s fabrication of a source for its claims that Seth Rich, not Russia, was responsible for the DNC hack. *See* Amended Complaint (Compl.) ¶ 69 (“Butowsky and Fox’s Zimmerman called Wheeler from Butowsky’s phone to falsely inform him that they had developed an FBI source supposedly confirming that emails were sent between Seth and WikiLeaks.”); ¶ 87 (“The article falsely attributed a quote to an unnamed federal investigator as stating: “I have seen and read the emails between Seth Rich and WikiLeaks.”).

Plaintiffs’ proposed search terms combine two relevant sets of terms: (1) terms for law enforcement sources; and (2) terms relating to the Wikileaks/DNC hack for which Fox is alleged to have fabricated a source. Fox’s objection is that the terms may “generate meaningless hits and have a low probability of generating documents not already covered.” That there may be *some* irrelevant hits is no bar. That is the purpose of a relevance review.² Plaintiffs have already significantly narrowed this proposal, including by limiting it to just two custodians for less than a two-year period. Fox has not even suggested, much less made a showing that the search would return a burdensome number of documents. Plaintiffs therefore respectfully request that the Court order Fox to run Plaintiffs’ proposed search.

² To the extent Fox objects to the “OR (Rich OR Seth), rather than an “AND,” there may be relevant discussions that do not expressly reference a member of the Rich family. Indeed, the title of the Zimmerman Article, “Slain DNC Staffer Had Contact with WikiLeaks Say Multiple Sources,” does not even reference the Rich name.

February 27, 2020
Page 3

Search relating to RFP 11: All documents reflecting or referring to communications with any Government Person in connection with the DNC Wikileaks Incident.

- (Wikileaks AND Russia) OR (DNC w/10 (Hack OR Leak OR Emails) AND Russia)) AND
 - Trump OR Spicer OR Bannon OR Kash OR Patel OR Nunes OR “Dee O” OR “Intelligence committee” OR (To/From/cc/bcc: “.gov”) OR Rohrabacher

Plaintiffs’ proposed search terms relating to RFP 11 are the product of significant tailoring, including agreeing to limit these terms to just three custodians: Zimmerman, Housley, and Wilson.

The Amended Complaint alleges that Fox, Zimmerman, Wheeler, and Butowsky worked directly with members of the government to promote a false narrative that Seth was the Wikileaks source for the purpose of taking the spotlight off Russia as the source of the DNC hack and, more specifically, President Trump’s connection with Russia. On April 20, 2017, Butowsky and Wheeler met with then-White House Press Secretary Sean Spicer about the planned story. Compl. ¶¶ 61-63. On May 14, 2017, Butowsky informed Wheeler that President Trump had read a draft of the Article and wanted it published “immediately.” *Id.* ¶ 73. On May 15, 2017, the day before Zimmerman published the Rich/Wikileaks Articles, Butowsky wrote to a team of “Fox News producers and on-air talent in New York” stating: “One of the big conclusions *we* need to draw from this is that the Russians did not hack our computer systems and ste[a]l emails and there was ***no collusions like trump with the Russians.***” *Id.* ¶ 82. Butowsky instructed Wheeler, “If you can, try to highlight this puts the Russian hacking story to rest.” *Id.* ¶ 86. On May 21, 2017, paid Fox News correspondent Newt Gingrich stated on Fox & Friends that Seth Rich was the source of the Wikileaks and “what does that tell you about what was going on? Because it turns out, it wasn’t the Russians.” *Id.* ¶ 104.

Again, Fox has made no showing of burden, as required. *John Wiley*, 298 F.R.D. at 186. Plaintiffs therefore respectfully request that the Court order Fox to run Plaintiffs’ proposed search.

Relevance Review

At the status conference on February 10, 2020, the Court asked whether the parties would conduct a relevance review or simply produce all documents hitting on the search terms. The parties agree that a relevance review is appropriate, but Fox takes an unduly narrow view of relevance—one that is incompatible with the allegations in the Amended Complaint and the well-established principle that “relevance, for purposes of discovery, is an extremely broad concept.” *Condit*, 225 F.R.D. at 105. Fox and Plaintiffs have two central disputes vis-à-vis “relevance”:

February 27, 2020
Page 4

First, Fox’s alleged motive of pinning the Wikileaks/DNC incident on a party other than Russia (rather than simply reporting the news) is relevant to showing that Defendants’ conduct toward the Riches was “extreme and outrageous”—an element of the tort of intentional infliction of emotional distress (IIED). *Rich v. Fox News Network, LLC*, 939 F.3d 112, 122 (2d Cir. 2019).

As the allegations cited in support of RFP 11 (above) show, documents reflecting Fox’s efforts to find a source for Wikileaks other than Russia—even documents that do not directly implicate Seth Rich—are “potentially relevant” to Plaintiffs’ claims. That is enough to warrant discovery. *Am. Fed’n of Musicians*, 2016 WL 2609307, at *4. Fox cannot withhold, on grounds of relevance, documents reflecting discussions of the DNC/Wikileaks incident and Russia’s role more broadly.

Second, Fox’s broader relationship with Butowsky and Wheeler, and their newsgathering and reporting tactics, are relevant to the claims in this case. Fox’s broader relationship with Butowsky is relevant to how “extreme and outrageous” a jury may find the allegation that Butowsky and Zimmerman “purportedly acting independent of each other, pursued Joel and Mary to try to gain their trust.” Compl. ¶ 29. Plaintiffs have reason to believe that Butowsky and Zimmerman (and Adam Housley) had worked together previously to publish “explosive” stories, using “anonymous” and “extremely dubious sources” with political motivations. *See id.* ¶ 34 (“Butowsky wrote to Wheeler by text: ... “Behind the scenes I do a lot of work, (unpaid) helping to uncover certain stories, my biggest work was revealing most of what we know about Benghazi.”). Exhibit 1 (November 7, 2016 article reporting on Zimmerman and Housley’s article on Benghazi); Exhibit 2 (November 7, 2016 article by Zimmerman on Benghazi). Yet Fox asserts that it is entitled to withhold as *irrelevant* documents that hit on the search terms and relate to Benghazi, rather than the Rich/Wikileaks articles. This is contrary to allegations in the Complaint and the “extremely broad” concept of relevance.

Fox’s broader relationship with Wheeler is likewise relevant to Fox’s culpability for using Wheeler to infiltrate the Rich Family and spread lies on national television about Joel and Mary’s murdered son, in furtherance of Fox’s political agenda. If Zimmerman or others at Fox used Wheeler in a similar role in that past, or knew that he was prone to reckless reporting, *see* Compl. ¶ 201, that too is relevant both to how “extreme and outrageous” the conduct was, as well as the claim of negligent supervision. Fox should not be permitted to withhold as irrelevant documents hitting search terms that relate to Wheeler’s reporting on other issues.

In arguing for a narrow reading of relevance (contrary to Rule 26), Fox generically invokes “newsgathering privilege.” But the newsgathering privilege does not render documents *irrelevant* under Rule 26 or entitle a party to withhold them entirely. If Fox wishes to claim a privilege, it must log those documents and make the requisite showing to allow Plaintiffs to challenge the privilege. *See Matter of*

February 27, 2020
Page 5

Andrews v. Andreoli, 92 Misc. 2d 410, 418 (N.Y. Sup. Ct. 1977) (journalist bears the burden of establishing the privilege).

Plaintiffs respectfully request that the Court order Fox not to withhold as irrelevant, documents relating to: (1) Fox's communications about the Wikileaks/DNC incident more broadly, including Russia's role and efforts to find the source; or (2) Butowsky and Wheeler's broader relationship with Fox and its employees.

Timeframe for Plaintiffs' Search

The parties agree on the search terms Plaintiffs will use to search for and produce responsive documents within their possession, custody, and control. A dispute remains, however, with respect to the timeframe for several of Fox's document requests. *See* Ex. 3. Plaintiffs note first that Fox's insistence in seeking Plaintiffs' documents that postdate the complaint is in direct opposition to its refusal to search and produce responsive post-complaint documents from its own custodians.

Two of the requests (RFPs 1 and 2) seek documents related to Seth Rich's alleged connection to Wikileaks, Seth Rich's death, and the investigation into his death. Plaintiffs have agreed to run broad terms (already yielding several thousand hits) to capture potentially responsive documents from several months before Seth's death until the filing of the complaint. Fox has not explained why documents from at least a year after the publication of its articles would be relevant to Plaintiffs' claims centered around the events leading up to and including that publication, much less relevance that would justify the significant burden in applying these broad terms—seeking documents *generally about Plaintiffs' son's death*—to an ongoing search that stretches into the present.

The remaining requests seek discovery into Plaintiffs' financial, medical, and emotional state. Plaintiffs have agreed to produce tax returns (through FY 2018) and medical records (through the present). Plaintiffs have also agreed to run broad terms—including simply the words “feeling” or “sad”—from January 2015 through March 2018, yielding over ten thousand hits. Again, Fox has given no reason why documents besides medical and financial records that postdate the complaint are sufficiently relevant to justify the burden of expanding these searches another several years into the present, particularly given the personal and intrusive nature of the information sought.

Plaintiffs welcome the opportunity to further brief any of these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Barron', followed by a horizontal line.

Elisha Barron

EXHIBIT 1

Fox's Final Election Hail Mary Is A Four Year Old Benghazi Claim Floated By Organization Of Conspiracy Theorists

Fox News Already Reported Speculation That Libya Consulate Guards Turned On U.S. Personnel Four Years Ago

WRITTEN BY ZACHARY PLEAT

PUBLISHED 11/07/16 7:00 PM EST

On the eve of the 2016 presidential election, Fox News pushed a report detailing the “explosive charge” that a security company hired to protect the U.S. diplomatic compound in Benghazi, Libya, was staffed with locals that participated in the September 11, 2012, attack that left four Americans dead, including Ambassador Chris Stevens. Fox actually reported identical speculation more than four years ago; their sources for the charge are an anonymous “independent security specialist, the co-author of a book that stated that there is “no evidence” the guards “were in league with the attackers,” and an organization filled with birthers and conspiracy theorists; and the network’s previous reporting about the security company featured noted fabulist Dylan Davies.

A week after the September 11, 2012, attack, Fox correspondent Ed Henry reported that “there are reports that security guards” hired by the British security contracting firm Blue Mountain Group “turned on the ambassador and that led to his death.” From a Nexis transcript of the September 18, 2012, edition of Fox News’ *Special Report with Bret Baier* (subscription required):

HENRY: Today, [State Department spokesperson Victoria] Nuland clarified the administration had, in fact, hired a private security company, Blue Mountain Group, to work inside the perimeter.

NULAND: They were hired to provide local Libyan guards who operated inside the gate doing things like operating the security access equipment, screening the cars.

(END VIDEOTAPE)

HENRY (on-camera): Significant, because there are reports that those Libyan security guards turned on the ambassador and that led to his death. Now, late today, Secretary Hillary Clinton said there was no actionable intelligence about an imminent attack in Libya. The keyword being actionable there.

Tonight, a FoxNews.com report by Malia Zimmerman and Adam Housley called similar reports an “explosive charge,” and presented them as completely new information:

An obscure private firm hired by the State Department over internal objections to protect U.S. diplomats in Benghazi just months before the American ambassador and three others were killed was staffed with hastily recruited locals with terror ties who helped carry out the attack, multiple sources told Fox News.

The explosive charge against Wales-based Blue Mountain Group comes from several sources, including an independent security specialist who has implemented training programs at U.S. Consulates around the world, including in Benghazi, where he trained a local militia that preceded Blue Mountain. The source, who spoke on condition of anonymity, said Blue Mountain used local newspaper ads to assemble a team of 20 guards, many of

whom had terror ties, after securing a \$9.2 million annual contract.

“The guards who were hired were locals who were part of the Ansar al-Sharia and Al Qaeda groups operating in Benghazi,” said the source, whose assignment in Benghazi had ended in November 2011. “Whoever approved contracts at the State Department hired Blue Mountain Group and then allowed Blue Mountain Group to hire local Libyans who were not vetted.”

[...]

John “Tig” Tiegen, one of the CIA contractors that responded to the Sept. 11, 2012 attack and co-author of “13 Hours: The Inside Account of What Really Happened in Benghazi,” confirmed to Fox News that the local Libyans who attacked the consulate that night included guards working for Blue Mountain.

“Many of the local Libyans who attacked the consulate on the night of Sept. 11, 2012, were the actual guards that the State Department under Hillary Clinton hired to protect the Consulate in Benghazi,” Tiegen told Fox News. “The guards were unvetted and were locals with basically no background at all in providing security. Most of them never had held a job in security in the past.

“Blue Mountain Libya, at the time of being awarded the contract by our State Department, had no employees so they quickly had to find people to work, regardless of their backgrounds,” he said.

One former guard who witnessed the attack, Weeam Mohamed, confirmed in an email sent to the Citizens Commission on Benghazi and obtained by Fox News, that at least four of the guards hired by Blue Mountain took part in the attack after opening doors to allow their confederates in.

“In the U.S. Mission, there were four people [who] belonged to the battalion February 17,” Mohamed wrote to the Commission, an independent body formed with Accuracy in Media to investigate the attack and the administration’s handling of it.

Fox’s sourcing for the story — which would contradict several reports by congressional committees and a review by the State Department — is extremely dubious. Their lead source is anonymous. Their second source, Tiegan, wrote in his bestseller *13 Hours* that there was “no evidence” the guards helped the attackers. From *13 Hours* (page 84-85):

Who opened the gate wasn’t clear, but responsibility for the entrance rested with the Blue Mountain Libya guards. By some accounts the armed invaders threatened the unarmed guards, who immediately acquiesced. A US government review raised the possibility that the “poorly skilled” local guards left the pedestrian gate open “after initially seeing the attackers and fleeing the vicinity.” No evidence has shown that the Blue Mountain guards were in league with the attackers, but maybe they were incompetent. As the report noted, “They had left the gate unlatched before.” Further complicating matters, the camera monitor in the guard booth at the front gate was broken, and new surveillance cameras.

The network’s third source comes by way of the Citizens Commission on Benghazi, which is staffed by multiple birthers, anti-Muslim activists, and conspiracy theorists who maintained that there was a Benghazi “cover-up.”

Fox previously relied upon Blue Mountain Group security contractor Dylan Davies for Benghazi reporting — in fact, Housley himself acknowledged on-air that some of the network’s 2012 Benghazi coverage had cited Davies, but they “stopped speaking to him when he asked for money.” In 2013, CBS News retracted a report that featured Davies’ fabricated claims about having scaled a wall of the Benghazi diplomatic compound while it was under attack and striking a terrorist with his rifle.

It’s no surprise that Fox News, whose obsession with finding a way to turn the tragedy in Benghazi into political attacks on President Obama and then-Secretary of State Hillary Clinton, would close the 2016 presidential campaign with a new Benghazi conspiracy.

EXHIBIT 2

[Print](#) [Close](#)

Benghazi guards turned on US diplomats in 2012 attack, sources say

By Malia Zimmerman, ,

Published November 07, 2016

[Fox News](#)

An obscure private firm hired by the State Department over internal objections to protect U.S. diplomats in Benghazi just months before the American ambassador and three others were killed was staffed with hastily recruited locals with terror ties who helped carry out the attack, multiple sources told Fox News.

The explosive charge against Wales-based Blue Mountain Group comes from several sources, including an independent security specialist who has implemented training programs at U.S. Consulates around the world, including in Benghazi, where he trained a local militia that preceded Blue Mountain. The source, who spoke on condition of anonymity, said Blue Mountain used local newspaper ads to assemble a team of 20 guards, many of whom had terror ties, after securing a \$9.2 million annual contract.



John "Tig" Tiegen was there and says guards turned on Americans.

“The guards who were hired were locals who were part of the Ansar al-Sharia and Al Qaeda groups operating in Benghazi,” said the source, whose assignment in Benghazi had ended in November 2011. “Whoever approved contracts at the State Department hired Blue Mountain Group and then allowed Blue Mountain Group to hire local Libyans who were not vetted.”

TIMELINE OF CLINTON'S BENGHAZI STATEMENTS

Stevens, shown in rear wearing black, with several of the guards sources say turned on him. (Special to Fox News)

Many were members of the Libyan government-financed February 17th Martyrs Brigade, an Islamist militia that had previously guarded Americans before being replaced by Blue Mountain.

John "Tig" Tiegen, one of the CIA contractors that responded to the Sept. 11, 2012 attack and co-author of "13 Hours: The Inside Account of What Really Happened in Benghazi," confirmed to Fox News that the local Libyans who attacked the consulate that night included guards working for Blue Mountain.

"Many of the local Libyans who attacked the consulate on the night of Sept. 11, 2012, were the actual guards that the State Department under Hillary Clinton hired to protect the Consulate in Benghazi," Tiegen told Fox News. "The guards were unvetted and were locals with basically no background at all in providing security. Most of them never had held a job in security in the past.

"Blue Mountain Libya, at the time of being awarded the contract by our State Department, had no employees so they quickly had to find people to work, regardless of their backgrounds," he said.

One former guard who witnessed the attack, Weeam Mohamed, confirmed in an email sent to the Citizens Commission on Benghazi and obtained by Fox News, that at least four of the guards hired by Blue Mountain took part in the attack after opening doors to allow their confederates in.

"In the U.S. Mission, there were four people [who] belonged to the battalion February 17," Mohamed wrote to the Commission, an independent body formed with Accuracy in Media to investigate the attack and the administration's handling of it.

"Always armed. And they are free to move anywhere inside a building mission.

"And therefore, they had a chance to do an attack on the mission's headquarters. They have all the details about the place. At the same time they have given the United States a painful blow," Mohamed wrote.

Blue Mountain officials did not return multiple requests for comment. The State Department acknowledged in internal emails obtained by FoxNews.com the local recruits fell short of their duty, but discounted the claim any

Benghazi guards turned on US diplomats in 2012 attack, sources say

took an active role in the attack that resulted in the deaths of Ambassador Christopher Stevens, Foreign Service Information Officer Sean Smith and CIA contractors and former Navy SEALs Tyrone Woods and Glen Doherty.

“While the Accountability Review Board report and other reports were critical of our local guards’ performance, we are not aware of any evidence that they participated in the attacks themselves,” said State Department spokesman John Kirby.

Blue Mountain was hired in February 2012, following an uprising that ended Col. Muammar Gaddafi's 42-year rule and plunged Libya into violent chaos. Congressional testimony in the wake of the attack on a consular office in Benghazi revealed that Stevens and his staff had made hundreds of requests for security upgrades but had been ignored by officials in Washington.

“We kept asking for additional support, including a 50-caliber mounted machine gun, but the State Department would not give it to us, because they said it would upset the locals,” the source told Fox News. “Instead, the State Department hired a company that doesn’t have employees, which then hired terrorists.”

Clare Lopez, a member of Citizens' Commission on Benghazi, said the Clinton State Department bears blame for the security situation.

“Think about it: Hillary Clinton's State Department actually hired the very people who, along with their jihadist allies in Benghazi, attacked us and killed U.S. Ambassador Chris Stevens and Sean Smith as well as CIA contractors Glen Doherty and Ty Woods,” Lopez said.

According to government records obtained by the Washington-based Judicial Watch, the State Department was in a “rush” to hire Blue Mountain UK, and its affiliate, Blue Mountain Libya, which together formed The Blue Mountain Group to secure the Benghazi contract.

“I understand there was a tremendous rush to get the original contract awarded, and the Service level agreement was most likely overlooked in the rush,” wrote State Department contracting officer Jan Visintainer, in a June 6, 2012, email. Emails obtained from [missing word] after the attack showed Visintainer urged Blue Mountain officials not to talk to the media.

Blue Mountain UK was formed in 2008 by David Nigel Thomas, a former Special Air Service official. Charles Tiefer, a commissioner at the Commission on Wartime Contracting, told Reuters the company was not well known.

"Blue Mountain was virtually unknown to the circles that studied private security contractors working for the United States, before the events in Benghazi," Tiefer said.

Despite the size of the operation, and having no staff or track record with the State Department, Blue Mountain Group landed the \$767,767-per-month contract to protect the Benghazi consular office, beginning on Feb. 17, 2012.

The company solicited applications in local newspapers and on websites, and very little, if any, screening of guards was done, the security specialist told Fox News. The lack of vetting led to several potentially dangerous hires beginning in March of 2012, he said.

“One of those guards hired by Blue Mountain was the younger brother of the leader of Al Qaeda of Benghazi,” he said.

In an email obtained by Judicial Watch, Jairo Saravia of the Regional Security office for the U.S. Embassy in Tripoli, told his superiors in Washington that Blue Mountain had held and lost security contracts in Tripoli, with the Corinthian Hotel and Palm City complex.

“The latest information is Blue Mountain is not licensed by the GOL (Government of Libya) to provide security services in Libya,” Saravia wrote. “I would advise not to use their services to provide security for any of our

annexes and/or offices due to the sensitivity this issue has with the current GOL.”

Prior to Blue Mountain, security for Americans in Benghazi had been provided by the February 17th Martyrs Brigade under a direct agreement with the State Department. Despite its Islamist orientation, the militia included dozens of locals who had been carefully cultivated and trained by the U.S., according to the source. The majority of the February 17 Militia guards were fired without warning when Blue Mountain was hired, leading some members to turn against the Americans, he said. The State Department kept on at least three February 17 employees for patrol.

Eric Nordstrom, the regional security officer in Libya who has vast, first-hand knowledge of some 600 security requests denied to the U.S. diplomatic mission in Libya, testified on May 8, 2013, before the Congressional Committee On Oversight & Government Reform that he was aware that employees with both February 17 Martyrs Brigade and Blue Mountain had ties to Islamist terrorists.

“I had met with some of my agents and then also with some annex personnel. We discussed that,” Nordstrom told lawmakers.

Nordstrom testified that the “ferocity and intensity” of the 13-hour, four-phase attack, on the 11th anniversary of 9/11, was nothing that they had seen in Libya, or that he had seen in his time in the Diplomatic Security Service, with as many as 60 attackers in the consulate.

“I am stunned that the State Department was relying on [locals] with extremist ties to protect American diplomats,” U.S. Rep. Blake Farenthold, R-Texas, told Fox News. “That doesn’t make any sense. How does that happen?”

Fox News was able to verify through a former Libyan guard the identities of several February 17 employees hired despite terrorist ties, who he said participated in the attack. While their identities have been provided to federal authorizes, none have been prosecuted.

Malia Zimmerman is an award-winning investigative reporter focusing on crime, homeland security, illegal immigration crime, terrorism and political corruption. Follow her on twitter at @MaliaMZimmerman

 [Print](#)  [Close](#)

[URL](#)

<https://www.foxnews.com/world/benghazi-guards-turned-on-us-diplomats-in-2012-attack-sources-say>

- [Home](#)
- [Video](#)
- [Politics](#)
- [U.S.](#)
- [Opinion](#)
- [Entertainment](#)
- [Tech](#)
- [Science](#)
- [Health](#)
- [Travel](#)
- [Lifestyle](#)
- [World](#)
- [Sports](#)
- [Weather](#)

- [Privacy](#)
- [Terms](#)

This material may not be published, broadcast, rewritten, or redistributed. © FOX News Network, LLC. All rights reserved. All market data delayed 20 minutes. [Updated Privacy](#) - [Do Not Sell my Personal Information](#) - [New Terms of Use](#) - [FAQ](#)

EXHIBIT 3

EXHIBIT 3 – DISPUTED DATE RANGES FOR PLAINTIFFS’ SEARCHES

Request for Production	Plaintiffs’ Proposal	Fox’s Proposal
1. All communications and other documents referring or relating to WikiLeaks or any individual or entity affiliated with WikiLeaks, including but not limited to, Gavin MacFayden or Julian Assange.	January 1, 2016-March 13, 2018 (filing of the complaint)	January 1, 2016 to the present
2. All communications and other documents referring or relating to the death of Seth Rich or investigation relating to his death.	May 1, 2016-March 13, 2018	July 9, 2016 to the present
17. All records and other documents relating to any appointments, visits, consultations, and/or care received by you from or with any health care or mental health providers, including but not limited to in the fields of neurology, primary care, internal medicine, psychology, psychiatry, social work, therapy, or any other discipline, since January 1, 2015.	Plaintiffs will agree to provide medical records through the present. Plaintiffs will produce any documents they intend to rely on to prove their damages claim. Plaintiffs will search for and produce other responsive documents from January 1, 2015-March 13, 2018	January 1, 2015 to the present
18. All communications and other documents sufficient to identify any health care or mental health providers who you have consulted, visited, and/or received care from since January 1, 2015.	Plaintiffs will agree to provide medical records through the present. Plaintiffs will produce any documents they intend to rely on to prove their damages claim. Plaintiffs will search for and produce other responsive documents from January 1, 2015-March 13, 2018	January 1, 2015 to the present
19. All communications and other documents referring or relating to your emotional state, distress, and/or well-being since January 1, 2015.	Plaintiffs will agree to provide medical records through the present. Plaintiffs will produce any documents they intend to rely on to prove their	January 1, 2015 to the present

EXHIBIT 3 – DISPUTED DATE RANGES FOR PLAINTIFFS’ SEARCHES

	damages claim. Plaintiffs will search for and produce other responsive documents from January 1, 2015-March 13, 2018	
22. All communications and other documents reflecting wages, other income, or any other moneys received by you since January 1, 2014, including but not limited to, W-2 forms, 1099 forms, paystubs, bitcoin or other cryptocurrency payments, Venmo transmittals, or eBay payments.	Plaintiffs will agree to provide tax returns through the 2018 tax year. Plaintiffs will produce any documents they intend to rely on to prove their damages claim. Plaintiffs will search for and produce other responsive documents from January 1, 2015-March 13, 2018	January 1, 2015 to the present
23. All job applications completed or obtained by you since January 1, 2015.	Plaintiffs will produce any job applications completed from January 1, 2016, through December 31, 2019. Plaintiffs will search for and produce other responsive documents from May 1, 2016-March 13, 2018.	January 1, 2015 to the present
24. All communications and other documents related to potential job changes by you since January 1, 2015.	January 1, 2016-March 13, 2018	January 1, 2015 to the present.